

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 20-948V

ANNIKA OLSEN-SANTORO,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 23, 2024

Paul Adrian Green, Law Office of Paul Green, Pasadena, CA, for Petitioner.

Benjamin Patrick Warder, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On July 31, 2020, Annika Olsen-Santoro filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the "Vaccine Act"). Petitioner alleged that she suffered a shoulder injury related to vaccine administration as a result of an influenza vaccine administered on October 2, 2019. Petition, ECF No. 1. On September 21, 2023, I issued a decision awarding compensation to Petitioner based on the Respondent's proffer. ECF No. 59.

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

Petitioner has now filed a motion for attorney's fees and costs, requesting an award of \$33,352.77 (representing \$32,976.00 in fees plus \$764.50 in costs). Petitioner's Application for Fees and Costs ("Motion") filed Oct. 30, 2023, ECF No. 64. In accordance with General Order No. 9, counsel for Petitioner represents that Petitioner incurred no out-of-pocket expenses. *Id.* at 3.

Respondent reacted to the motion on Nov. 13, 2023, reporting that he is satisfied that the statutory requirements for an award of attorney's fees and costs are met in this case, but deferring resolution of the amount to be awarded to my discretion. Respondent's Response to Motion at 2-3, ECF No. 65. Petitioner did not file a reply thereafter.

I have reviewed the billing records submitted with Petitioner's requests and find a reduction in the amount of fees to be awarded appropriate, for the reasons listed below.

ANALYSIS

The Vaccine Act permits an award of reasonable attorney's fees and costs. Section 15(e). Counsel must submit fee requests that include contemporaneous and specific billing records indicating the service performed, the number of hours expended on the service, and the name of the person performing the service. *See Savin v. Sec'y of Health & Human Servs.*, 85 Fed. Cl. 313, 316-18 (2008). Counsel should not include in their fee requests hours that are "excessive, redundant, or otherwise unnecessary." *Saxton v. Sec'y of Health & Human Servs.*, 3 F.3d 1517, 1521 (Fed. Cir. 1993) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). It is "well within the special master's discretion to reduce the hours to a number that, in [her] experience and judgment, [is] reasonable for the work done." *Id.* at 1522. Furthermore, the special master may reduce a fee request *sua sponte*, apart from objections raised by respondent and without providing a petitioner notice and opportunity to respond. *See Sabella v. Sec'y of Health & Human Servs.*, 86 Fed. Cl. 201, 209 (2009). A special master need not engage in a line-by-line analysis of petitioner's fee application when reducing fees. *Broekelschen v. Sec'y of Health & Human Servs.*, 102 Fed. Cl. 719, 729 (2011).

The petitioner "bears the burden of establishing the hours expended, the rates charged, and the expenses incurred." *Wasson v. Sec'y of Health & Human Servs.*, 24 Cl. Ct. 482, 484 (1991). The Petitioner "should present adequate proof [of the attorney's fees and costs sought] at the time of the submission." *Wasson*, 24 Cl. Ct. at 484 n.1. Petitioner's counsel "should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private

practice ethically is obligated to exclude such hours from his fee submission.” *Hensley*, 461 U.S. at 434.

ATTORNEY FEES

Petitioner requests compensation for attorney Paul Green at the following rates: \$420 per hour for time billed in 2020; \$430 per hour for time billed in 2021; \$440 per hour for time billed in 2022; and \$450 per hour for time billed in 2023. See ECF No. 64 at 2. However, Mr. Green has previously been awarded the lesser rates of \$405 per hour for time billed in 2020, and \$420 per hour for time billed in 2021. See *Silva v. Sec’y of Health & Human Servs.*, No. 18-1887V, 2021 WL 946043 (Fed. Cl. Spec. Mstr. Mar. 5, 2021); and *Flores v. Sec’y of Health & Human Servs.*, No. 19-0818V, 2022 WL 1873711 (Fed. Cl. Spec. Mstr. Apr. 22, 2022).

I find no reason to deviate from such reasoned determinations, and it otherwise is not the practice of OSM to adjust prior rate determinations upward in later cases. See *Jefferson v. Sec’y of Health & Hum. Servs.*, No. 19-1882V, 2023 WL 387051 (Fed. Cl. Spec. Mstr. Jan. 9, 2023). I will therefore reduce Mr. Green’s rates to those previously awarded for his work. This results in a reduction of **\$745.00** in the sum to be awarded.³ For time billed in the 2022-23 timeframe, however, the requested rates are reasonable, and will be adopted.

ATTORNEY COSTS

Petitioner requests \$764.50 in overall costs. ECF No. 64-3. This amount is comprised of the Court’s filing fee, medical records, and shipping costs. I have reviewed the requested costs and find them to be reasonable, and shall award them in full.

CONCLUSION

The Vaccine Act permits an award of reasonable attorney’s fees and costs for successful claimants. Section 15(e). Accordingly, I hereby GRANT Petitioner’s Motion for attorney’s fees and costs. I award a total of **\$32,995.50** (representing \$32,231.00 in fees and \$764.50 in costs) as a lump sum in the form of a check jointly payable to Petitioner and Petitioner’s counsel. In the absence of a timely-filed motion for review (see Appendix

³ This amount is comprised of: $(\$420 - \$405 = \$15 \times 34.80 \text{ hrs.}) + (\$430 - \$420 = \$10 \times 22.30 \text{ hrs.}) = \745.00

B to the Rules of the Court), the Clerk of Court shall enter judgment in accordance with this Decision.⁴

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.